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| September 22, 2016 | | | | | |
| FEDERAL MARITIME COMMISSION | | | | | |

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV

v.

**MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO. 1953(I)

KAIRAT NURGAZINOV

v.

**MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

SECOND NOTICE TO PARTIES REGARDING SUBPOENAS

Commission Rules provide that an Administrative Law Judge will issue a subpoena “upon request of any party, without notice to any other party.” 46 C.F.R. § 502.131. On September 12, 2016, the Office of the Secretary received a subpoena *duces tecum* submitted for signature by Complainants. The subpoena commands the witness (the United States Department of Homeland Security) to appear at the office of counsel for Complainants on September 26, 2016, with automobile titles for the four vehicles that are the subject of this proceeding that Complainant claims were presented to the United States Customs Field Office at the Port of Newark/New York. *See* attached.

Commission Rule 131 provides:

Subpoenas for the attendance of witnesses or the production of evidence shall be issued upon request of any party, without notice to any other party. Requests for subpoenas must be submitted in writing to the Office of Administrative Law Judges. . . . Where it appears that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, the administrative law judge may in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought.

46 C.F.R. § 502.131.

Counsel's cover letter accompanying the subpoena is dated September 6, 2016. The USPS priority mail envelope in which the subpoena was mailed was addressed to Karen V. Gregory, who at that time was the Commission's Secretary. A time stamp on the letter indicates that the letter was received in the Office of the Secretary on September 12, 2016. The envelope and subpoena arrived in the Office of Administrative Law Judges on September 13, 2016, a day on which the undersigned was not in the office. Therefore, the earliest the subpoena could have been signed was September 14, 2016, twelve days before the stated return date. By the time the subpoena could be returned to Complainants' counsel for service, then service actually accomplished, several more days would pass.

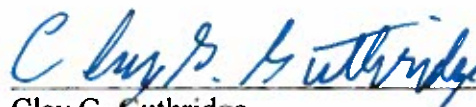
The witness being served – the United States Customs Field Office at the Port of Newark/New York – is undoubtedly an extremely busy place. Commission Rule 132 provides:

[W]ithin ten (10) days after service of . . . a subpoena for production of evidence, but in any event at or before the time specified in the subpoena for compliance therewith, the person to whom the subpoena is directed may, by motion with notice to the party requesting the subpoena, petition the presiding officer to quash or modify the subpoena.

46 C.F.R. § 502.132. Service of a subpoena with a return date approximately one week after service for records of shipments that occurred nearly four years ago could create a burden on that office that may not be justified, either to move to quash the subpoena or to search for and produce the documents. Therefore, before signing the subpoena, I order the parties to appear for a telephone conference for Complainants "to show the general relevance and reasonable scope of the . . . evidence sought." 46 C.F.R. § 502.131. The conference is limited to this issue.

1. Counsel are ordered to establish a date and time for the conference on October 4, 5, 6, or 7 when both are available. Judge Guthridge already has a meeting scheduled for the morning of October 4, so do not schedule the conference for that morning. Be advised that until this matter is scheduled, other conflicts may arise that take precedence.

2. At the time of the conference, counsel will establish a conference call, then call the Office of Administrative Law Judges main number at 202-523-5750 to be transferred to Judge Guthridge.
3. The Office of Administrative Law Judges intends to create an audio recording of the conference and send a copy of the recording to the participants after the conference. The Commission will not create a transcript of the conference unless it determines a transcript is needed.
4. Counsel are ordered to direct all comments to the presiding officer. Counsel are ordered NOT to address comments to each other during the conference.



Clay G. Guthridge
Administrative Law Judge

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
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INFORMAL DOCKET NO.: 1953(I)

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— vs. —

**MICHAEL HITRINOV a/k/a
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EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

SUBPOENA DUCES TECUM

**TO: U.S. Department of Homeland Security
U.S. Customs and Border Protection
Attn: Edward P. Nagle, Director
Office of Fines, Penalties, Forfeitures
1100 Raymond Blvd.
Newark, NJ 07102**

YOU ARE HEREBY COMMANDED to appear at the Law Office of Marcus A. Nussbaum, Esq., P.O. Box 245599, Brooklyn, NY 11224, on the 26th day of September, 2016 at 9:30 a.m., in the forenoon of that day, and to bring with you and produce at that time and place the following documents and things of which you have custody or control:

Copies of the automobile titles were presented to the U.S. Customs Field Office at the Port of Newark/New York for validation for the export of the following automobiles:

- (a) 2009 GMC Acadia (VIN# GKLVDNED6AJ138200) – Date of Export on or about December 21, 2012;
- (b) 2011 Jeep Compass (VIN# 1J4NF5FB7BD282296) – Date of export on or about November 15, 2012;
- (c) 2009 Mercedes-Benz C300 (VIN# WDDGF81X49R073295) – Date of export on or about November 15, 2012;

- (d) 2009 Toyota Camry (VIN#4T1BE46K19U306703) – Date of export on or about January 29, 2013.

All four automobiles were exported from the port of NY/NJ to Kotka Finland. Upon information and belief, the corporate entity that presented the titles to U.S. Customs is known as Empire United Lines Co. Inc. Upon information and belief, the ocean liner that the vehicles were loaded onto is known as Mediterranean Shipping Company. Please see attached documents.

The nature of this action is that the Complainant herein as alleged that Respondents have violated the Shipping Act of 1984.

For your failure to do so you will be deemed guilty of a contempt and shall be liable for all damages sustained to the party aggrieved thereby and to forfeit \$50 in addition thereto. **PLEASE CALL MARCUS NUSSBAUM, ESQ. UPON RECEIPT OF THIS SUBPOENA AT (201) 956-7071.**

Dated: Washington, DC
September_____, 2016

Clay G. Guthridge
Chief Administrative Law Judge